MEETING OF THE BOARD OF BANK ADVISORS

November 19, 2012
9:00 am

Department of Financial Institutions
324 South State Street, Suite 201
Salt Lake City Utah

Minutes

BOARD MEMBERS PRESENT:

Eric Schmutz, Curt Taylor, Craig White, Matt Packard, and Dave Brown.

DEPARTMENT OF FINANCIAL INSTITUTIONS STAFF PRESENT:

Commissioner Ed Leary, Tom Bay, Mark Peterson, Paul Allred, Paul Cline, and Sonja Long.

OTHERS PRESENT:

Lew Goodwin, Green Dot Bank; John Sorensen, Home Savings Bank; Cindy Johnson, Lewiston State Bank; Leonel Castillo, American Bank of Commerce; Don Norton, Capital Community Bank; Roger Shumway, Bank of Utah; Jon Allen, Bank of American Fork; Ray Dardano, Marlin Business Bank.

1. Call Meeting to Order – Chairman Matt Packard

2. Minutes –

Commissioner Leary had a correction in the first paragraph of his comments, "wanted *the* board…". Curt Taylor made the motion to accept them as corrected, Craig White seconded the motion. It was unanimous.

Commissioner Leary asked to take a moment and present Cindy Johnson with a plaque recognizing her service as a member of the Board of Bank Advisors. He mentioned that Leonell Castillo received his plaque when he stopped to visit with Commissioner Leary about a month ago.

Introductions were made around the table.

3. Vendor Management – Paul Cline

Paul Cline went through the areas that a bank might use vendor management. As bankers establish these relationships there are certainly advantages and risks to it. Advantages include increased revenue, reduced costs, enhanced performance or efficiencies, and access to specific expertise. There are also some disadvantages or risks involved as well. Those include reputational risks; every time a third party is doing something on your behalf there is always the risk of them doing something wrong. Dissatisfied customers, or regulation/law violations, operational risks, transaction risks, problems with service or product delivery, credit risks, and compliance risks, and UDAP risks. Monitoring your third party relationships is very key and critical.

He went through some of the things that examiners see when they examine your third party relationships. He referenced FIL 44-2008. This FIL recommends four things in vendor management - risk assessment, due diligence, contract structure review, and oversight program.

4. Community Bank Performance Trends – Tom Bay

Tom gave out his handout and went over the information.

5. Commissioner's Comments – Commissioner Leary

He recently attended the Banker's Roundtable with Utah Business Magazine. One question that was asked was 'is there a foreclosure bubble in Utah still?' His intuitive response would have been no, because we are not a judicial foreclosure state we have been able to continue to move them along. As of 7:00 am this morning some data became available from the monitor of the settlement of the largest five servicers across the country. He gets a breakdown by Utah on that number. He found that one of the big five has only one foreclosure in process as of quarter end in Utah, up through the "biggie" as far as mortgages are concerned; they have almost 1,300 in foreclosure. So the total is 1,600 in foreclosure among the five big servicers involved in that settlement. They are servicing approximately 301,000 loans in Utah, with an unpaid balance of a little over $50 billion. Commissioner Leary did not know how that compared with other states. There was a brief discussion on these numbers.

TAG expiration – Matt Packard represented Utah very well on the panel at the Chairman's Outreach. Commissioner Leary felt that the Chairman was pretty clear that he didn't think that TAG would be extended. From the regulator standpoint, the FDIC has made some calls to banks in Utah that could be affected by this, and asked what their plans are. Dave Brown said that there was recently an FIL with some suggested language on notifying customers.

Commissioner Leary understands that about one-third of the Dodd-Frank rules are in effect now. About one-third are in notice or announcement.

Dave Brown asked how the department is doing with new examiners, etc. Commissioner Leary said that we have one quarter of our examiners that are brand new, we are working through that. If you have any feedback, please fill out the survey that is sent with your examination report. Besides the new examiners, some of our challenges are learning all of the new rules, regulations and procedures.

6. Other business –

Paul Allred gave a brief overview of where we are headed during the upcoming legislative session. Each year after the session ends, Paul and Commissioner Leary sit down and talk about what they need to address in the next session. We have identified seven items that we have given to a bill sponsor.

- Foreign consumer lenders doing business with Utah residents. When he says foreign, he means from another country. We would like to see a change in our law that requires them to domesticate before they send us the notification forms.
- We have to give approval for security offerings by Financial Institutions; we had some entities say to the department that it would be nice if we could make extensions. We are going to ask that a provision be put in 7-1-503 allowing the Commissioner to extend those offering periods for up to 6 months at a time.
- We are going to amend our payday provisions in Chapter 23. They will need to register through the NMLS system. This is to prevent the CFPB from feeling like they need to take over the tracking of payday lenders and title lenders through the federal system.
- We are going to repeal Chapter 7 of Title 7, which is the Savings and Loan section. We are doing this because there are no state chartered Savings and Loans. There hasn't been any for 8 years. And there are not any federally chartered Savings and Loans because of Dodd-Frank. We will also have to eliminate the designation of a supervisor of Savings and Loans, in connection to that we want to create a supervisor of MSB's (Money Service Businesses). That is a defined term under federal law that covers payday lenders, check cashers, title lenders, money transmitters, third party payment issuers, etc.
- We found a problem in our escrow chapter, Chapter 22. We control the use of the word escrow in the state of Utah. We found out that there are about 20 some insurance/title companies in their name and they didn't get permission from us to do that. The folks at the insurance department were a little disappointed to learn that we would have to approve their entities to use the word escrow. We are going to try to create an exemption. So those who are licensed by the insurance department won't need to seek permission from us to use the word escrow in their name. So that will be a clean-up.
- We are going to try to remove a provision from the payday act that requires that internet lenders have our phone number on their website. That is a requirement for the brick and mortar payday lenders now; when you walk into their stores you will see a notice how to contact the department. That is true for internet lenders as well. But what we are finding is people throughout the country are dealing with internet lenders and the only phone number on their website is ours.

Those are the things that we are going to try to get done in this session.

Tom also asked Paul to talk about the derivative rule. At the last meeting we talked about lending limits. When Dodd-Frank was being debated the people in Washington didn't like derivatives and they didn't want banks engaging in derivatives. The original plan was to eliminate banks ability to use derivatives at all. Lobbyists went in and explained that they would be taking away an important tool if they eliminated it. They decided that national banks could engage in derivatives and state chartered banks could if the law in the state where they were chartered takes into consideration credit exposure to derivatives. The deadline for having that in their law is January 21, 2013. So we passed a bill last session that changed our credit limit provisions for both community banks and industrial banks to include reference to credit exposure derivatives. That meant that we needed to go into Rule R331-23 and include guidance on banks engaging in derivatives transactions. We formally filed the amended rule on Halloween and it got published on November 15 in the state bulletin. The comment period ends on December 17, we are really hoping that everyone weighed in during the informal process and it will go through.

7. Date of next meeting – February 25, 2013 – 9:00 am